

REMARKS

Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

The specification and drawings have been amended to correct matters of form and one or more typographical errors. It is respectfully submitted that no new matter has been introduced.

Claims 1-35 are now pending in this application. Claims 1, 18, and 19 are the independent claims.

I. The Objection to the Drawings

Figure 5 was objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because it includes the following reference sign(s) not mentioned in the description: Figure 5, reference 454 was used twice on two different objects. Herewith submitted is a revised version of FIG 5, which corrects the duplicate reference. It is respectfully submitted that no new matter has been introduced. Thus, reconsideration and withdrawal of the objection to the drawings is respectfully requested.

II. The Anticipation Rejection

Claims 1, 3-12, 18, 19 and 21-30 were rejected as anticipated under 35 U.S.C. §102(e). In support of the rejection, Ethridge (U.S. Patent No. 6,353,609) was cited. This rejection is respectfully traversed.

Ethridge fails to establish a prima facie case of anticipation. See MPEP 2131. To anticipate expressly, the “invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim”. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter “with sufficient clarity and detail to establish that the subject matter existed in the

prior art and that its existence was recognized by persons of ordinary skill in the field of the invention”. *Crown Operations Int’l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354 (Fed. Cir. Jan. 6, 2003) (“A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.”)

Claims 1 and 18, from which claims 3-12 depend recites “a circuit switched device that provides **physical switching between a plurality of ports based on one or more commands from the packet switched device.**”

Ethridge does not teach expressly or inherently “a circuit switched device that provides **physical switching between a plurality of ports based on one or more commands from the packet switched device.**” Instead, Ethridge allegedly recites a “preferred packet access network” (col. 4 line 58) upon which “the telephony gateway” (col. 5 line 8) converts signals “into a **common packet format**” (col. 5 line 10). Ethridge allegedly recites “the network is shared by the numerous **virtual connections** established by the packetization of the voice and data signals and the assignment of packet addressing.” See col. 5 lines 20-23. Ethridge allegedly recites that there “is **no need** in the present invention **to allocate** certain amount of **bandwidth** and assign it **to particular circuit connections.**” See col. 5 lines 25-27. Thus Ethridge fails to teach a “circuit switched device”, “physical switching”, or “physical switching” of a “circuit switched device” “based on ... commands from the packet switched device.”

Accordingly, it is respectfully submitted that the rejection of claims 1 and 18 are unsupported by Ethridge and should be withdrawn. Also, the rejections of claims 3-12, each ultimately depending from independent claim 1 are unsupported by Ethridge and also should be withdrawn.

Claim 19, from which claims 21-30 depend, recites “providing **physical switching using a circuit switched device** between a plurality of ports based on the one or more commands.”

Ethridge does not teach expressly or inherently “providing **physical switching using a circuit switched device** between a plurality of ports based on the one or more commands.”

Accordingly, it is respectfully submitted that the rejection of claim 19 is unsupported by Ethridge and should be withdrawn. Also, the rejections of claims 21-30, each ultimately depending from independent claim 1 are unsupported by Ethridge and also should be withdrawn.

III. The Obviousness Rejection

Claims 2, 13-17, 20, and 31-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Ethridge (U.S. Patent No. 6,353,609) in view of Cao (U.S. Publication No. 2002/0181485). These rejections are respectfully traversed.

None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness. “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.” See MPEP § 2143.

As described above, Ethridge does not expressly or inherently teach or suggest “a circuit switched device that provides physical switching between a plurality of ports based on one or more commands from the packet switched device”, or “providing physical switching using a circuit switched device between a plurality of ports based on the one or more commands.” Cao does not overcome the deficiencies of Ethridge.

Thus, even if combinable or modifiable, the cited references do not expressly or inherently teach or suggest **every** limitation of the claims.

Accordingly, it is respectfully submitted that Ethridge in view of Cao does not render obvious independent claims 1, 18, and 19. Furthermore, because these independent claims are not rendered obvious by Ethridge in view of Cao, it stands that claims 2, 13-17, 20, and 31-35, each ultimately depending from these allowable claims, are also not rendered obvious by Ethridge in view of Cao.

IV. The Obviousness-Type Double Patenting Rejection

Claims 13, 14, 17, 31, 32, and 35 have been rejected for double patenting under 35 U.S.C. 101 for claiming the same invention as that of claims 4, 5, and 7 of copending U.S. Patent Application No. 09/685952. The Office Action requires either cancellation of the conflicting claims from all but one application or maintenance of a clear line of demarcation between the applications. This rejection is respectfully traversed.

Claims 13, 14, and 17 recite a “**communications node**”. Claims 4, 5, and 7 of copending U.S. Patent Application No. 09/685952 recite a “**method for restoring communications**”. It is respectfully submitted that a clear line of demarcation exists between a “**communications node**” and a “**method for restoring communications**”. Accordingly, it is respectfully submitted that the double patenting rejection of these three claims is not supported and should be withdrawn.

Claims 31, 32, and 35 recite a “**method for providing communication paths in an Internet Protocol network environment**”. Claims 4, 5, and 7 of copending U.S. Patent Application No. 09/685952 recite a “**method for restoring communications**”. It is respectfully submitted that a clear line of demarcation exists between a “**method for providing communication paths**” and a “**method for restoring communications**”. Accordingly, it is respectfully submitted that the double patenting rejection of these three claims is not supported and should be withdrawn.

CONCLUSION

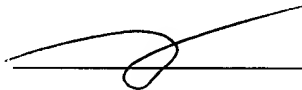
It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC

Date: 9 June 2004

A handwritten signature in black ink, appearing to read "Michael N. Haynes", is written over a horizontal line.

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